APR 16 1946
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1945

No. 1123

JOHN M. HARTZBERG and LOUIS HARTZBERG, copartners doing business under the firm name and style of J. & L. HARTZBERG,

Petitioners,

v.

THE NEW YORK CENTRAL RAILROAD COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

HENRY H. SHEPARD,
JOSEPH M. PROSKAUER,
Counsel for John M. Hartzberg and Louis Hartzberg, copartners doing business under the firm name and style of J. & L. Hartzberg,
Petitioners.

INDEX

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statement	3
Specification of Errors	6
Reasons Relied on for the Allowance of the Writ	8
Conclusion	13

CASES CITED

Aron v. Pennsylvania R. Co., 80 F. (2d) 100	9
Atlantic Coast Line R. Co. v. Barksdale, 32 Ga. App. 643	9
Atlanta Terminal Co. v. American Baggage & Transfer Co., 125 Ga. 677	9
Baum v. Long Island R. R. Co., 58 Misc. 34	11
Birmingham Terminal Co. v. Thomas, 207 Ala. 363	9, 12
Boston & Maine R. R. Co. v. Hooker, 233 U. S. 97	9, 12
Bracht v. San Antonio & A. P. R. Co., 254 U. S. 489	10
Caten v. Salt City Movers & Storage Co., 149 F. 2d 428	10
California v. Thompson, 313 U. S. 109	11
Chicago &c. R. R. Co. v. Solan, 169 U. S. 133	12
Cleveland C. C. & St. L. R. Co. v. Dettlebach, 239 U. S. 588	9, 12
Cloverleaf Co. v. Patterson, 315 U. S. 148	11
Crowley Bros. v. Grand Trunk R. Co., 185 Mich. 482	6
Cummins Amendment, Re, 33 I. C. C. 682	11
Denver Union Terminal R. Co. v. Cullinan, 72 Colo. 248	10, 12
Duckworth v. Arkansas, 314 U. S. 390	11
Farnsworth v. National Express Co., 166 Mich. 676	6
Federal Compress Co. v. McLean, 291 U. S. 17	9, 10, 11
Feige v. Michigan Central R. R. Co., 62 Mich. 1	6
Fraam v. Grand Rapids &c. Ry. Co., 161 Mich. 556	10

PAGE

Galveston &c. Ry. Co. v. Woodbury, 254 U. S. 357 .... 9, 12
Gulf C. & S. F. R. Co. v. Texas, 204 U. S. 403 10

Jewelers' Protective Union et al. v. Pennsylvania R. Co. et al., 36 I. C. C. 71 11

Kensington, The, 183 U. S. 263 11

Milwaukee Mirror & Art Glass Works v. Chicago, M. & St. P. Ry. Co., 148 Wisc. 173 10
Missouri Pacific R. Co. v. Porter, 273 U. S. 341 11

National Baggage Committee v. A. T. & S. F. Ry Co., 32 I. C. C. 152 11
N. Y. C. & H. R. R. Co. v. Fraloff, 100 U. S. 24 11
New York Central R. Co. v. Mohney, 252 U. S. 152 ... 10

Parker v. Brown, 317 U. S. 341 11
Pennsylvania R. Co. v. Hughes, 191 U. S. 477 12
Pennsylvania R. Co. v. M. McGirr's Sons Co., 287 Fed. 334 9

Southern Pacific Co. v. Arizona, 249 U. S. 472 10
Southern R. Co. v. Prescott, 240 U. S. 632 ..... 9, 12
State v. Jacksonville Terminal Co., 90 Fla. 721 9

Terminal R. Ass'n. v. Brotherhood of Railroad Trainmen, 318 U. S. 1 11

Walling v. Baltimore Steam Packet Co., 144 F. (2d) 130 9

STATUTES CITED

Compiled Laws of Michigan, 1922,
Sections 9566, 9623, 11019, 11023, 11056, 11126, 11518 ..... 5, 6

Interstate Commerce Act (49 U. S. C. A., sec. 1 et seq.) 3, 6, 7, 8, 9
Section 1 (2) (a) 10, 12
Section 1 (3) 9, 12
Section 1 (6) 11, 12
Section 6 (1) 12
Section 20 (11) 3, 7, 8, 10, 11

Supreme Court of the United States

OCTOBER TERM, 1945

No. _____

JOHN M. HARTZBERG and LOUIS HARTZBERG, copartners doing business under the firm name and style of J. & L. HARTZBERG,

Petitioners,

v.

THE NEW YORK CENTRAL RAILROAD COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

To the Honorable the Chief Justice of the Supreme Court of the United States of America and the Honorable Associate Justices thereof:

Your petitioners, John M. Hartzberg and Louis Hartzberg, copartners doing business under the firm name and style of J. & L. Hartzberg, submit this, their petition, for a writ of certiorari to review the judgment and order of the Court of Appeals of the State of New York, and the judgment entered thereon in the office of the Clerk of the Supreme Court of the State of New York, County of New York, which affirmed the judgment of affirmance entered in the office of the Clerk of the Supreme Court of the State of New York, County of New York, entered upon the order

of affirmance of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, which affirmed a judgment of the Supreme Court of the State of New York, County of New York, in the sum of $141.87 in petitioners' favor for respondent's grossly negligent loss of petitioners' jewelry salesman's sample trunk containing jewelry samples of the value of $169,078.47 (R. 41).

Opinions Below

The opinion of the Supreme Court of the State of New York, County of New York, appears at R. 31, and is reported in 181 Misc. 129, 41 N. Y. S. 2d, 345. No opinion was delivered by either the Appellate Division of the Supreme Court of the State of New York, First Judicial Department (R. 387, 389; 268 App. Div. 904, 51 N. Y. S. 2d, 741; 268 App. Div. 978, 52 N. Y. S. 2d, 741) or the Court of Appeals of the State of New York (R. 391, 294 N. Y. 641, Remittitur R. 394, 295 N. Y. 703).

Jurisdiction

The judgment and order of the New York Court of Appeals was entered on January 19, 1946 (R. 394) and the judgment of the Supreme Court of the State of New York, New York County, was entered thereon on February 7, 1946 (R. 397). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended (28 U. S. C. A., Sec. 344 (b)).

Questions Presented

This case arises out of the loss of petitioners' jeweler's sample trunk, containing jewelry samples of the stipulated worth of $169,078.47 (R. 163), stolen by reason of respondent's gross negligence from its Michigan Central Station baggage room at Detroit, Michigan, where it had

been delivered by a local transfer company to be held by respondent in local storage under the transfer company's private claim check, until further instructed, pursuant to the claim-check system maintained at the station, before the making of any arrangements for checking such trunk for transportation as baggage, and before the time when value could have been or had to be declared therefor.

The State court held that the Interstate Commerce Act and the respondent railroad common carrier's baggage tariff rules filed thereunder with the Interstate Commerce Commission whereby respondent's liability for property delivered to it was limited in the absence of a declaration of higher value, were applicable, to the exclusion of the prevailing law and public policy of Michigan, to limit petitioner's recovery to $141.87.

Questions of the scope and construction of the Interstate Commerce Act, the Carmack and Cummins Amendments thereto and the regulations filed thereunder, are directly presented—specifically, whether Congress intended the Act and the Carmack and Cummins Amendments thereto (49 U. S. C. A., sec. 20 (11)) to permit respondent to limit its liability for property accepted by it at its station baggage room to be held by it in local storage as bailee, before an opportunity was afforded to declare a higher value and before being checked for transportation, merely because of the owner's undisclosed intention thereafter to check such property for interstate transportation as baggage, in the usual course, without declaration of a higher value.

Statement

Petitioners' salesman, Brodie (R. 47), intending later that evening to acquire a passenger ticket from Detroit, Michigan, to Cleveland, Ohio, and to check thereon as baggage the jeweler's sample trunk (R. 95-97), caused it to be delivered from his hotel in Detroit, by a local transfer company, to the baggage room floor of the Michigan Cen-

tral Station (R. 68-69), leased and controlled by respondent (R. 242), where respondent was accustomed to receive property and baggage, and did accept the sample trunk, before being checked for transportation (R. 242). Respondent negligently permitted the trunk to be stolen about 40 minutes after it had been delivered, it being at that time merely consigned to the Michigan Central Station (R. 180), to be held by respondent on only the transfer company's private claim check (R. 233-4). The only receipt ever issued by respondent for the trunk was the special receipt issued to transfer companies upon acceptance of such a trunk pursuant to the claim-check system maintained at this station (R. 178-9). The receipt described the trunk as a sample trunk, stated its weight, its point of origin as the Statler Hotel, its destination as the Michigan Central Station and set forth the number of the transfer company's private claim check upon surrender of which the trunk would be checked or redelivered (R. 144, 150-1, 339).

Under the claim-check system maintained at its Michigan Central Station in Detroit, Michigan, respondent accepts into its baggage room, when delivered by the local transfer company, trunks belonging to customers of the transfer company, with only the transfer company's private claim check attached, without first requiring presentation of transportation, without first requiring such trunks to be checked for transportation as baggage, without knowledge or inquiry as to whether the owner has purchased or intends to purchase a railroad ticket to any destination, and without knowledge or inquiry whether any such destination is to be interstate or intrastate (R. 233-4). Under this system, respondent undertakes to hold such trunks until further instructed by the holder of the duplicate transfer company check, without requiring surrender of the receipt issued to the transfer company or any further identification (R. 259). Under this system, the owner of the trunk may appear at the station at any time at his convenience (within 30 days after storage charges commence), present

his train ticket and the duplicate of the transfer company's check, and thereby deliver the trunk to be checked for transportation, whereupon, for the very first time, he is afforded an opportunity to make a declaration of value, or he may reclaim the trunk. If the trunk is claimed without presentation of transportation, storage charges from time of receipt are collected, otherwise a charge is made for storage after the first 24 hours (R. 185-6, 373). If not claimed within 30 days after storage charges commence, the trunk is forwarded to the "unclaimed warehouse" and held subject to further storage charges.

Rule 14 of respondent's baggage tariff entitled "Storage" provides (Rule 14 (e)) that "all baggage or property stored with the transportation line will be held by it in the capacity of warehouseman only" (R. 373). Under respondent's baggage tariff rules, the presentation of transportation is required before a trunk can be checked for transportation as baggage (R. 365). Prior to the time that a trunk has been so checked, under the baggage tariff rules and respondent's practice, no opportunity exists for any declaration of value and none would be accepted (R. 234, 248, 249, 258-265). In no event, under the baggage tariff rules, may value in excess of $2500 be declared at any time (R. 369, 370, 372), the only alternative being to ship as freight under another tariff at a higher valuation, although by its baggage tariff, respondent undertakes to accept, check and transport jewelry samples as sample baggage (Rules 4 (c), 4 (d) and 9, as supplemented by Tariff Supplements 6 and 12).

Petitioners instituted an action in the New York State courts to recover the entire value of their trunk and contents on the theory the respondent was liable therefor upon a local bailment subject to the local law of Michigan (R. 7-21), under which law respondent would be liable for the full value of the trunk and contents and could not invoke a tariff rule limitation of liability based upon a failure to declare a higher value (*Compiled Laws of Michigan,*

1929, Sections 11019, 11023, 11056, 11126, 11518, 9623, 9566; *Feige* v. *Michigan Central R. R. Co.*, 62 Mich. 1; *Crowley Bros.* v. *Grand Trunk R. Co.*, 185 Mich. 482; *Farnsworth* v. *National Express Co.*, 166 Mich. 676).

Respondent contended that its liability was that of an interstate common carrier in that the delivery of the trunk to it and its custody thereof were incident to a contemplated interstate transportation of the trunk as baggage, that its baggage tariff rules filed with the Interstate Commerce Commission governed, that such tariff provisions limit its liability to value of $100 for 150 pounds of baggage, unless a higher value is declared, and that no value was declared (R. 25-28).

The New York Supreme Court upheld respondent's view (R. 31-40) and judgment was entered in its favor on its third and fourth partial defenses limiting petitioners' recovery to $141.87 (R. 41), which judgment was affirmed by the Appellate Division of said Supreme Court (R. 387) and by the Court of Appeals (Remittitur, R. 394). The State court held that Federal law was applicable to the exclusion of State law, that under Federal law the tariff rule limitations may be validly invoked to limit the respondent's liability for the loss herein and that under Federal law petitioners could have obtained full coverage for their property by shipping the same as freight (R. 31-40).

Specification of Errors

The New York Court of Appeals, in affirming the judgment of affirmance entered upon the order of the Appellate Division of the Supreme Court of the State of New York, First Department, affirming the judgment of the Supreme Court of the State of New York, County of New York, erred:

1. In holding that the Interstate Commerce Act and the tariff rules filed thereunder with the Interstate Commerce Commission govern, to the exclusion of State law, the ex-

tent of a railroad carrier's liability for property lost by its negligence while held in local storage in its station baggage room, subject to a transfer company's private claim check pursuant to a claim-check system maintained at the station, and before being checked for interstate transportation, and in failing to hold that such liability is governed by local State law and public policy.

2. In holding that the limitation of liability permitted by the Second Cummins Amendment with respect to "baggage carried on passenger trains or boats, or trains or boats carrying passengers" extends to liability for property held in "every phase logically or reasonably connected with such transportation from the time of its initial delivery to the carrier" including liability for property held in a service which is not "necessarily incidental" to shipment, and in failing to hold that limitation of liability was permitted for baggage only upon being checked for interstate transportation before which it could not be deemed to come within the "baggage carried" exception of the Second Cummins Amendment.

3. In holding that said limitation of liability is available to a carrier who has accepted and negligently lost a trunk before affording the prospective passenger an opportunity to declare and pay for a higher declared value, and in failing to hold that until the prospective passenger has checked his trunk for interstate transportation and had been afforded such an opportunity to declare a higher value the carrier may not invoke its baggage tariff rules to limit its liability for property received and held in its custody.

4. In holding that said limitation of liability is available to a carrier whose tariff, as here, prohibited the declaration of any value in excess of $2500 for jeweler's sample trunks when checked as sample baggage, and in failing to hold that such a limitation of liability was not available where the carrier's tariff prohibited the baggage to be declared and paid for at its full value.

Reasons Relied on for the Allowance of the Writ

1. Novel and vital questions of Federal law never before decided by this Court, as to the scope, construction, and application of the Interstate Commerce Act, the Carmack and Cummins Amendments thereto, and of baggage tariff rules filed thereunder, are involved, to wit:

(a) May a carrier limit its liability under the Act as to property accepted before it has made any contract of carriage therefor, *i. e.*, while it has custody of the property under a local storage bailment, which may or may not ripen into a contract of carriage, when State law prohibits such limitation?

(b) May a carrier limit its liability under the Act for property accepted by it as bailee for local storage, because of a prospective passenger's undisclosed intention thereafter to enter into a contract for interstate transportation of such property?

(c) May a carrier limit its liability under the Act, as to property accepted without any contract of carriage on the assumption that a duty rests on a prospective passenger to declare full value on delivery when the carrier would not permit or accept any such declaration until the making of a contract of carriage?

(d) May a carrier limit its liability under the Act because of a failure to declare full value for the contents of a jeweler's sample trunk which it accepts as sample baggage where its published baggage tariffs prohibit such full declaration?

2. The State court has decided these questions in a way probably not in accord with applicable decisions of this Court.

3. The State court has erroneously interpreted and applied decisions of this Court on questions of Federal law.

The State court incorrectly relied on *Boston & Maine R.R. Co.* v. *Hooker*, 233 U. S. 97, and *Galveston &c. Ry. Co.* v. *Woodbury*, 254 U. S. 357. These were cases of checked baggage, and come within the "baggage carried" exception. (See *Atlantic Coast Line R. Co.* v. *Barksdale*, 32 Ga. App. 643.) The *Hooker* case merely held that baggage actually checked and transported on an interstate ticket did not cease to be subject to the Act until called for and taken away by the passenger. Storage awaiting such call is so "necessarily incidental" to shipment (*Cleveland C. C. & St. L. R. Co.* v. *Dettlebach*, 239 U. S. 588, *Southern R. Co.* v. *Prescott*, 240 U. S. 632), as to be fairly embraced within the words "baggage carried."

Here, however, the storage facility afforded prior to the making of any contract of carriage—indeed, a contract of carriage might never have been made (*cf. Federal Compress Co.* v. *McLean*, 291 U. S. 17, 21, 22)—should not be held so "necessarily incidental" to shipment as to be fairly embraced within the words "baggage carried".

Moreover, such storage does not even come within the statutory definition or contemplation of "transportation" (49 U. S. C. A., Sec. 1 (3)). Close analogies in Federal Circuit courts and other State courts reinforce this construction, holding only those services included as are necessarily incidental to shipment and excluding services which the law does not require a common carrier to perform (*Pennsylvania R. Co.* v. *M. McGirr's Sons Co.*, 287 Fed. 334, cert. denied 262 U. S. 743; *Aron* v. *Pennsylvania R. Co.*, 80 F. 2d 100, cert. denied 298 U. S. 658; *Walling* v. *Baltimore Steam Packet Co.*, 144 F. 2d 130), such as the service of accepting and holding trunks delivered by a transfer company to a railroad baggage room under the claim check system heretofore described (*State* v. *Jacksonville Terminal Co.*, 90 Fla. 721, 755; *Atlanta Terminal Co.* v. *American Baggage & Transfer Co.*, 125 Ga. 677, 680, 687-8), which is governed not by baggage tariff rules filed with the Interstate Commerce Commission, but by State law (*Birmingham Terminal Co.* v. *Thomas*, 207 Ala. 363).

The claim-check system has been described by these cases as founded on a practice which wholly precedes the creation of the relation of passenger and carrier—as the simple matter of storage of parcels before the prospective passenger qualifies to become a passenger and before he tenders his parcel to be checked as baggage—which has no relation to the duty of carriage founded on the contract for passenger transportation. The apt analogy is to a parcel room bailment (*Milwaukee Mirror & Art Glass Works* v. *Chicago M. & St. P. Ry. Co.*, 148 Wis. 173; *Fraam* v. *Grand Rapids &c. Ry. Co.*, 161 Mich. 556) and must be construed to be excluded from the definition of transportation of property declared by the Interstate Commerce Act (49 U. S. C. A., Sec. 1 (2) (a)) (*Denver Union Terminal R. Co.* v. *Cullinan*, 72 Colo. 248).

But even if such storage facilities, as were here afforded in anticipation of a possible future contract of interstate carriage, be deemed within the Act (*cf. Bracht* v. *San Antonio & A. P. R. Co.*, 254 U. S. 489; *Gulf C. & S. F. R. Co.* v. *Texas*, 204 U. S. 403; *New York Central R. Co.* v. *Mohney*, 252 U. S. 152; *Southern Pacific Co.* v. *Arizona*, 249 U. S. 472; *Federal Compress Co.* v. *McLean*, 291 U. S. 17) and within the "baggage carried" exception, the carrier here cannot limit its liability under the Act because it failed to afford an adequate opportunity voluntarily to declare and pay a higher value (*Caten* v. *Salt City Movers & Storage Co.*, 149 F. 2d, 428, 432). The trunk was negligently lost before any contract of carriage was ever made and, admittedly, no declaration of higher value could have been made and none would be accepted until a contract of carriage had been concluded. Obviously, no duty rested on the putative passenger to make such a contract of carriage by checking the trunk for transportation as baggage before delivering the trunk to the baggage room floor under the claim-check system. Nor would a declaration of full value of a jeweler's sample trunk have been accepted, if sought to be made, since the tariff rules forbade declaration in excess of $2500 for any baggage. Nor was the privilege to ship as

freight at a higher declaration an adequate substitute for the right to check as baggage upon declaring a higher valuation and paying for the increased risk (*The Kensington*, 183 U. S. 263). The carrier may impose a higher charge for a larger risk (*N. Y. C. & H. R. R. Co.* v. *Fraloff*, 100 U. S. 24, 27; *National Baggage Committee* v. *A. T. & S. F. Ry. Co.*, 32 I. C. C. 152; *Re Cummins Amendment*, 33 I. C. C. 682, 696), but no exemption from liability in excess of $2500 for negligence can be exacted by the carrier for baggage, no matter what the amount may be (49 U. S. C. A., Sec. 20 (11)) provided the excess be stated. The carrier must take and carry the baggage, "be the value what it may" (*Baum* v. *Long Island R. R. Co.*, 58 Misc. 34, 43). To compel jewelry salesmen to ship their sample trunks as freight in order to obtain full protection would frustrate the very purpose of the Interstate Commerce Commission in promulgating the definition of sample baggage set forth in the carrier's baggage tariffs to accommodate the jewelry trade which could not function if the salesmen were not permitted to check their distinctive jewelry sample trunks as baggage but were required to use express or freight facilities. (*Jewelers' Protective Union et al.* v. *Pennsylvania Railroad Co. et al.*, 36 I. C. C. 71, R. 346-354.)

The State court incorrectly construed and defined the field occupied by the Federal legislation regulating interstate commerce in excluding the effect of State law and policy upon the amount of the carrier's liability for a local intrastate activity, which preceded and did not necessarily relate to the contemplated interstate shipment (*Federal Compress Co.* v. *McLean*, 291 U. S. 17, 21; *Missouri Pacific R. Co.* v. *Porter*, 273 U. S. 341; *Terminal R. Ass'n.* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1, 4; *Parker* v. *Brown*, 317 U. S. 341, 361, 363; *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, 153-6; *Duckworth* v. *Arkansas*, 314 U. S. 390, 394-5; *California* v. *Thompson*, 313 U. S. 109, 113-4). The Carmack Amendment applies only to the liability for property received for transportation from a point in one State to a point in another State. By 49 U. S. C. A., Sec. 1 (6)

the carrier's duty to establish regulations and practices affecting any service with respect to baggage is limited to "carrying". The requirements of Sec. 1 (6) and Sec. 6 (1), with respect to regulations affecting "storage" and the statement of all "storage charges" in the carrier's schedules, are limited to carriers "subject to the provisions of this chapter" and "all traffic, transportation and facilities defined in this chapter." Congress indicated its intent to subject to the Act the services of "receiving", "storage" and "handling", when rendered with respect to "property transported" (49 U. S. C. A., Sec. 1 (3)) and to exclude from the application of the Act the identical services with respect to "property wholly within one state" (49 U. S. C. A., Sec. 1 (2) (a)).

The cases of *Boston & Maine R. R. Co.* v. *Hooker,* 233 U. S. 97; *Cleveland C. C. & St. L. R. Co.* v. *Dettlebach,* 239 U. S. 588; *Southern R. Co.* v. *Prescott,* 240 U. S. 632, and *Galveston &c. Ry. Co.* v. *Woodbury,* 254 U. S. 357, cited by the State court, all involved "property transported". It is obvious that storage of property before transportation has begun, which is never checked for transportation or transported is not storage included within the Act by Sec. 1 (3) but is storage excluded from the Act by Sec. 1 (2) (a) (*Denver Union Terminal R. Co.* v. *Cullinan,* 72 Colo. 248). Manifestly, it is not subject to the limitation provisions of a baggage tariff filed with the Interstate Commerce Commission to the exclusion of State law and policy (*Birmingham Terminal Co.* v. *Thomas,* 207 Ala. 363; see *Pennsylvania R. Co.* v. *Hughes,* 191 U. S. 477; *Chicago &c. R. R. Co.* v. *Solan,* 169 U. S. 133).

4. The questions involved are of great importance to all railroads and persons contemplating the use of railroads. The record portrays that over 30,000 pieces of baggage were handled at the respondent's Detroit station alone, during the month of June, 1941, that the average length of time such property was held in the baggage room between delivery and final disposition was approximately six hours at

the longest, and that about one-half of one percent remained twenty-four hours before being checked out (R. 258). The record also discloses that at least 7000 jewelry salesmen use the railroads to receive, carry, store and handle their distinctive jeweler's sample trunks containing samples of substantial value (R. 347). The rights and liabilities of the respective parties and the quantity of protection that may be gained for such property while held in the baggage room before being checked for transportation present Federal questions of vital importance which should be determined by this Court.

Conclusion

Wherefore, it is respectfully submitted that the important and serious Federal questions involved and inherent herein require that they be authoritatively resolved and settled by this Court, in the public interest, that this petition for a writ of certiorari to the Supreme Court of the State of New York, County of New York, should be granted to review the judgment and order of the New York Court of Appeals and the judgment entered thereon in the Supreme Court of the State of New York, County of New York, and that the said judgments should be reversed.

HENRY H. SHEPARD,
JOSEPH M. PROSKAUER,
Counsel for John M. Hartzberg and Louis Hartzberg, copartners doing business under the firm name and style of J. & L. Hartzberg,
Petitioners.

April 15th, 1946.